

MEES Regulations

The Key Negotiating Tool for the 2020s

Property Managers Association

19 June 2024

Ben Strange MRICS

Chartered Building Surveyor

Senior Director, Mobius Building Consultancy

NOT FOR PRESENTATION



Half an Hour

Building Surveyor



EPCs



Immediately after (light) lunch



"Half an hour of my life I'm never gonna get back"

1. Keep you awake
2. Make you think building surveyors are interesting
3. Make you think that EPCs are interesting
4. New negotiating tools to secure amazing deals
5. Make you think half an hour wasn't long enough
6. All whilst saving the planet



MEES and EPCs are more relevant and a bigger topic than ever



2 and a half years until minimum standard of C

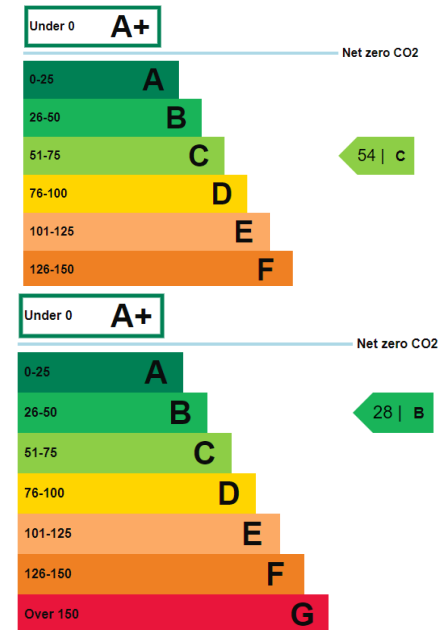


Over 300,000,000 sq.m. (3bn sq ft!) to become 'sub-standard' as of 2027



Huge increase in awareness of 'use' of EPCs

Over 80% of EPCs lodged since 2014 are C or below – over 5bn sq ft due to be sub-standard as of 2030



Headline bubbles

Pre June 2022
EPCs will now be
different

How will
this property be a
B by 2030?

Listed Buildings
are **NOT** exempt
from MEES/EPCs

EPC is **NOT** required
for a lease renewal

Disinformation and
misunderstanding =>
opportunity

NOT FOR PRESENTATION

For the avoidance of doubt...



Currently minimum standard of 'E'



2027 proposed to increase to 'C'



2030 proposed to increase to 'B'



No new lettings of sub-standard buildings

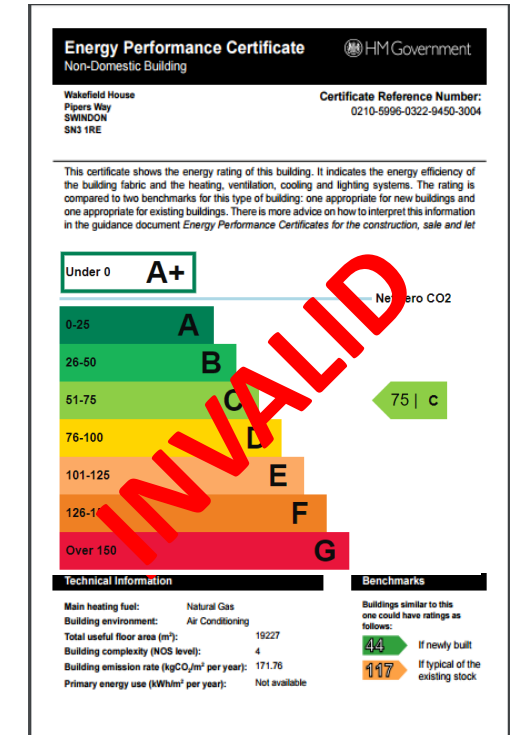


No continuing lettings of sub-standard buildings



No lease renewals/extensions on sub-standard buildings

NOT FOR PRESENTATION



Carbon Factors – June 2022

If the EPC was done before June 2022 it is very likely to now be different

Pre June 2022-
2012 data



Coal
Gas

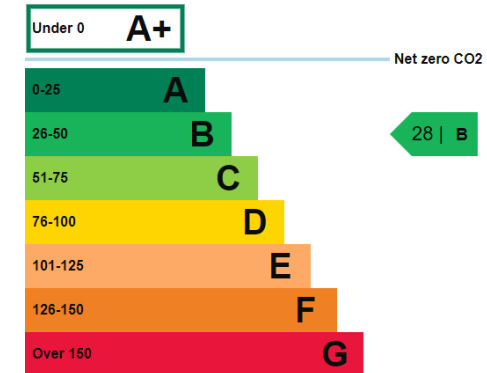
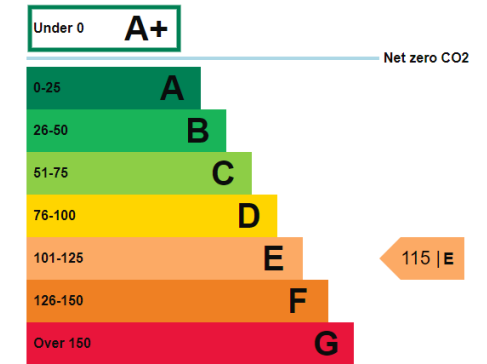
Post June 2022



Offshore Wind
Solar
Onshore Wind
Nuclear

NOT FOR PRESENTATION

73%



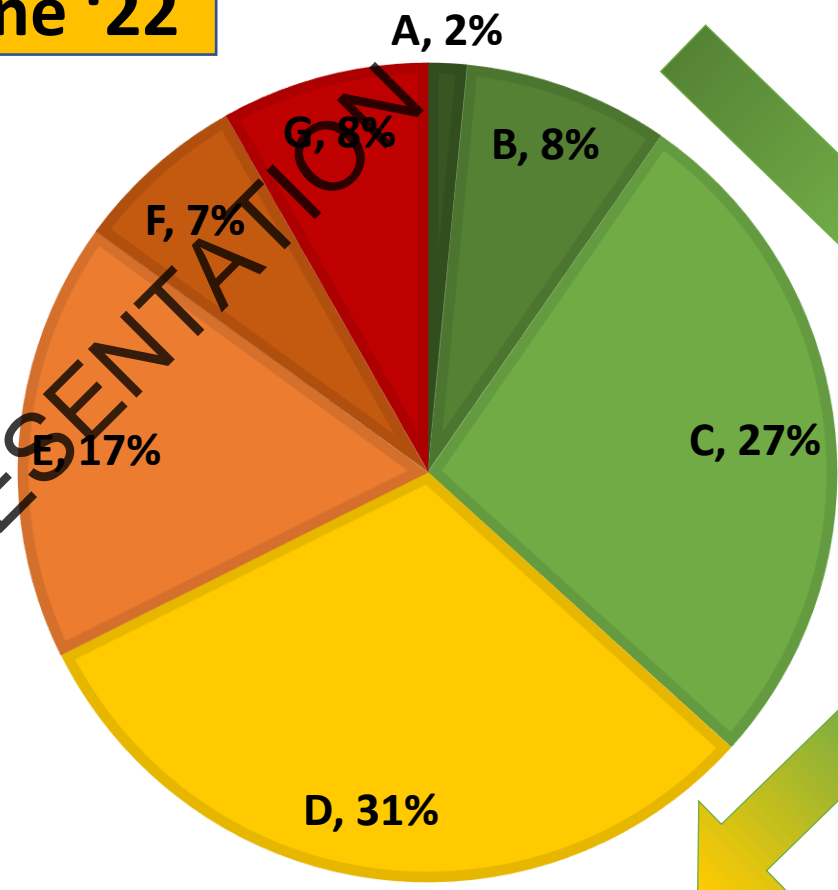
Gas/Oil fuelled properties are now achieving worse results post June 2022

The worry for currently compliant gas-fuelled properties

Gas-heated – 1-3 banding drop post June '22

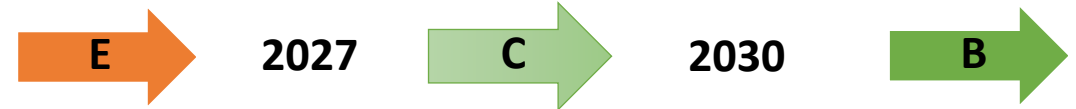
- 42% of A rated buildings
- 45% of B rated buildings
- 44% of C rated buildings
- 39% of D rated buildings
- 30% of E rated buildings

Shift in rating upon reassessment + Incremental minimum standard



1 billion sq ft B ratings

Sub-standard in 2.5 years time



New Lease Negotiations

- 2,500 sq ft retail - 'shell' condition
- 10 year, FRI lease
- £150,000 p.a. rent – EPC 'on request'

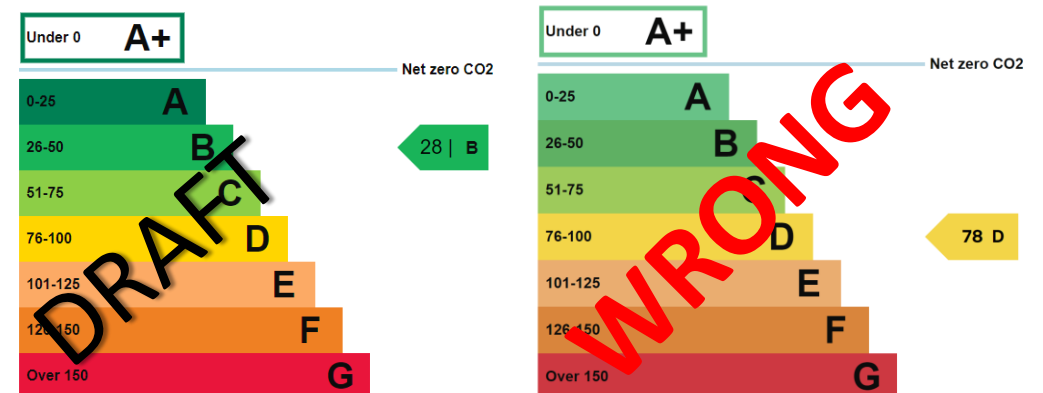
Tenant strategy (strong covenant/well advised)

- Property will be non-compliant (2027)
- Our proposals will secure a B rating

The value (the alternative) – add'l rent free

- enforcement from 2027 – 20% Rateable Value
- landlord capex to improve rating - £40k?
- loss of rent/void costs - 6 months?

“Our proposed lease terms and fit out works will indemnify you from the impact of the MEES Regulations – something that has a capital value far in excess of a further 12 months Rent Free”



Lease Break/surrender

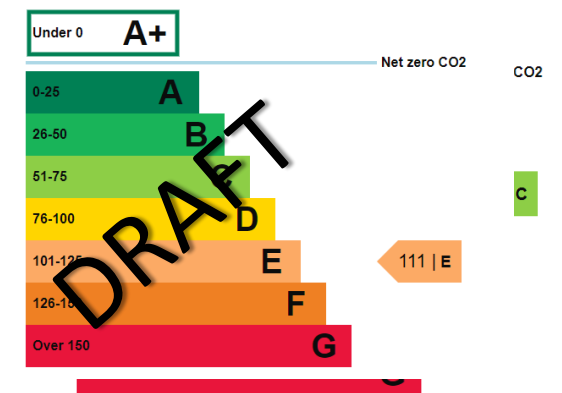
Pre June 2022 EPCs will now be different

- Branch not performing
- 10yr renewal lease granted 2020 (2019 EPC)
- Older HVAC and lighting (but in repair)
- break option Oct 2025 (with conditions).
- tenant draft EPC:



"The existing EPC is inaccurate in today's assessment terms and in fact is an 'E' rating. This rating would render the property sub-standard as of 2027 and – if the lease is not broken – the landlord will be in breach and will be required to undertake improvements."

1. agree early surrender, notional dilaps and delete the draft EPC
2. Run to the break and lodge the E-rating



Renewal Negotiation – retail park

- Gas heating demised
- Tenant holding over
- Uncompromising Landlord pushing for renewal
- Claims to have new tenant lined up

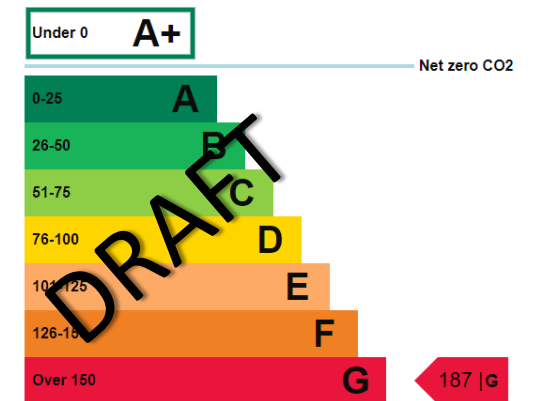
EPC is **NOT** required for lease renewals



*“The EPC rating for the demised property makes it sub-standard and unlawful to let. Your suggestion of letting to a new tenant is therefore not possible and instead we are the **only** tenant that you can continue to let this property to, provided the EPC is not lodged.”*

“BTW, the rest of the units on the estate are all the same.”

1. Issue notice – EPC lodged – dilaps deflected – no new lease
2. Agree to rental proposal – delete draft EPC – new EPC lease terms



Warning re replacement of gas systems



Energy efficiency improvements may result in 4x utility bill costs

- ✘ Replacing gas boilers with electric boilers – 99% vs 100% efficient – 6p vs 24p per kWh
- ✘ Gas space heaters vs electric radiant heaters – hybrid a good potential option

Pre-lease DD should include consideration of EPC rating and its implications

Service Charge/PPM

Airport/ Shopping Centre

Landlord claim for central HVAC works:

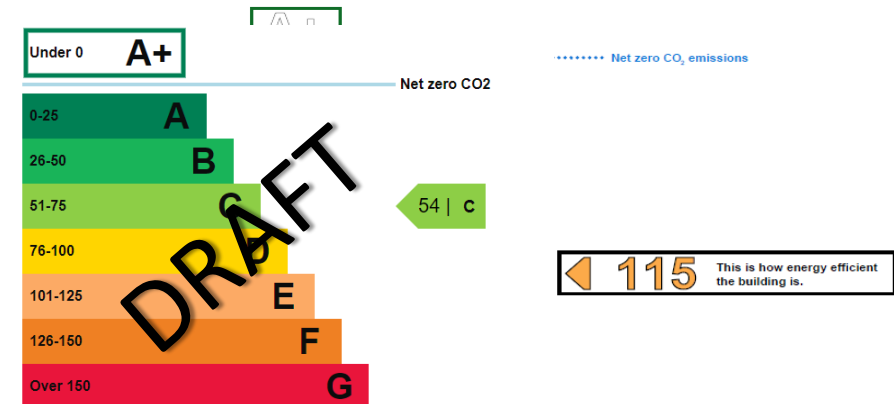
£17.5million

- Compliance with Statute (landlord)
- Good estate management (prep for 2027)

Tenants:

1. No value for money
2. Compliance with statute not including MEES
3. You don't need an EPC for common parts

Shopping Centre Leases – Tenants require particular caution on MEES/EPC obligations



Dilapidations

- Tenant vacating
- Pre-Carbon Factors EPC
- FRI lease

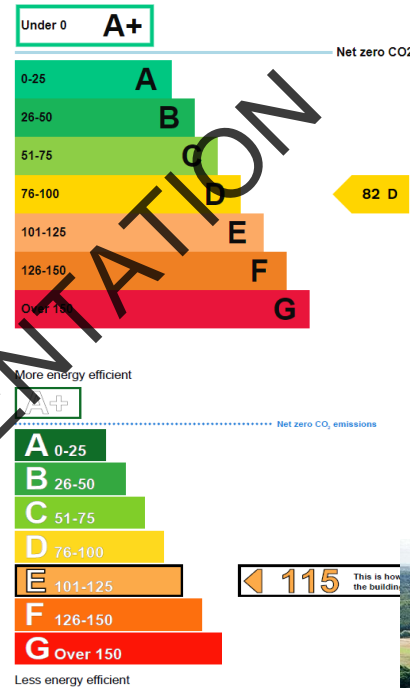
How is this property going to be a 'B'?

- Dilaps claim to return the demised premises in repair
- On the lease end date the demised premises EPC rating.

"No landlord would undertake work to market the building as an 'E' rating in 2024 – upgrades to a B would be a minimum"

"We have modelled the viable improvement options available and all of them have a fundamental impact upon the claim"

"The diminution valuation we have undertaken shows that the impact of the alleged elements of the claim are dwarfed by the impact of the poor EPC rating"



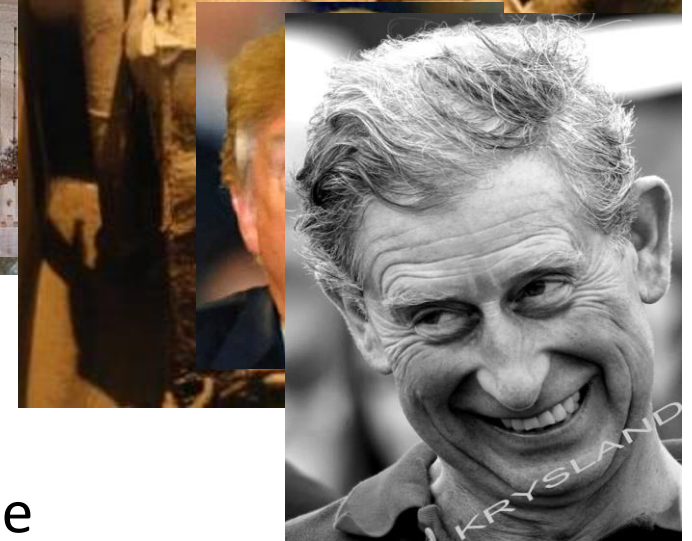
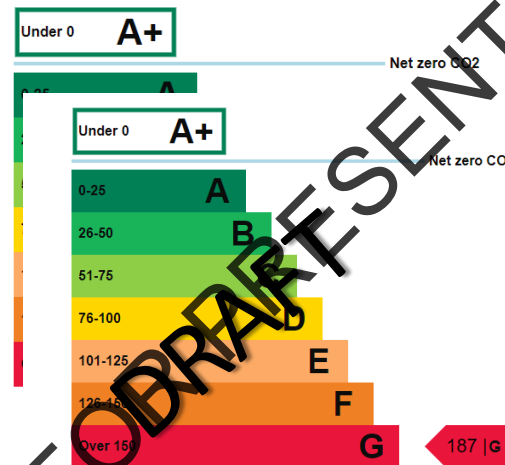
Picture this in a retail scenario

Sale and Leaseback

- Freeholder with large, prestigious property
- Sale and leaseback whole property
- Antique(-ated) lighting
- Shockingly old boilers
- EPC – C(75) – 2017

Sale and lease proceed

- Lease on FRI basis; BUT
- Includes Landlord statutory compliance clause
- Tenant within year one makes claim for breach with draft EPC
- Claim basis includes higher utility bills/ issues of sub-letting, etc.
- New Landlord capex of £20million required to secure compliance



Lease wording ref EPCs – probably for reference

- Definition of Premises** – does it define the EPC?
- Repair Clause** – does it infer EPC improvements?
- No EPC Clause** – does/can it really prohibit EPCs?
- Tenant comply with statute** – including MEES?
- Landlord comply with statute** – allow improvements?
- Allow Entry** – could dictate exemption or not.
- Alterations** – specifically, terms of consent.
- Alienation** – who becomes responsible for MEES?
- Service Charge** – just repairing the existing, or...?
- Rent Review** – how is the hypothetical bldg defined?
- Yield up** – what is the tenant required to hand back?
- Sustainability** – how far does goodwill go?
- Break Clause** – requirement for MEES compliance?

Dated _____


[LANDLORD]
and
[TENANT]
and
[GUARANTOR]

LEASE
Relating to premises known as [ADDRESS]

WHOLE (OFFICE)
(Open Market Rent)

Term	[•] years
Initial Rent	£[•]
Rent-free Period	[None][[•] months]
Rent review pattern	[5 yearly][None]
Rent review basis	[Open Market][Index-linked ([RP][CPI])][Stepped]

[DRAFTING NOTE: THIS LEASE IS INTENDED TO BE USED AS A TEMPLATE. IT SHOULD BE ALTERED TO REFLECT ANY REQUIREMENTS THAT ARE SPECIFIC TO THE PROPERTY, PARTIES AND TERMS OF THE TRANSACTION. A COMPARISON AGAINST THIS TEMPLATE SHOULD BE SUPPLIED WHEN THE DRAFT LEASE IS FIRST SUBMITTED TO THE TENANT'S SOLICITORS.]



MCL-OFFICE-01 VERSION 1.7

MEES and...?

Service Charge
Challenges

Dilapidations

Lease
negotiation

Rent Reviews

Lease
renewals

Schedules
of condition

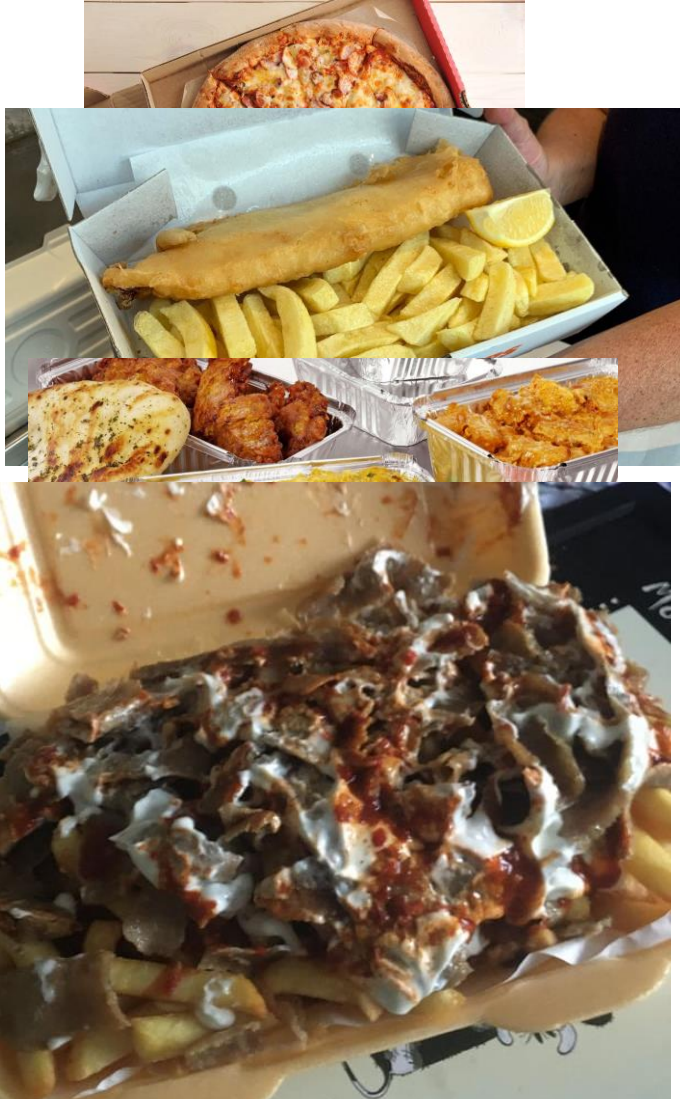
Licences
to alter

Valuation

TDD

Sub-letting/
Assignment

Take-aways!



Draft EPC certificates can be extremely valuable

DD inc EPC/MEEs advice is actually important

Contributes to ESG/net zero plans

New angle for negotiation – on a non-negotiable!



Ben Strange MRICS
Chartered Building Surveyor
Senior Director

bstrange@mobiusbc.co.uk
07792 568301

Mobius Building Consultancy

The Hop Exchange
24 Southwark Street
London SE1 1TY

mobiusbc.co.uk
020 3355 1500